IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

CRP.No. 310 of 2007

EP.34/2006 IN OS.61/2002 of MUNSIF COURT, KANJIRAPPALLY

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REVN. PETITIONER/RESPONDENTS-JUDGMENT DEBTORS:

1. ISMAIL, S/O. MARAKKAR, MALIYEKKA THUNDIYIL, PATTIMATTOM KARA, KOOVAPPALLY VILLAGE.

2. RASHEED, S/O. IBRAHIM, KALLOLI HOUSE, DO. DO.

3. AJNAS, S/O. KASSIM,VELLIYAMPARAMBIL, DO. DO.

4. RASILY, S/O. THAMPIL THENAMMAKKAL,DO. DO.

5. NASAR, S/O. MAKKAR,MALIYEKKA THUNDIYIL, DO. DO.

6. THE PUBLIC OF THE WARD NO.VI OF KANJIRAPPALLY GRAMA PANCHAYAT, REP. BY SHAKEELA NAZEER, VALAYANAPPARA HOUSE, POOTHAKKUZHI KARA, KANJIRAPPALLY VILLAGE, (FORMER PANCHAYAT MEMBER).

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENT/PETITIONER-DECREE HOLDER:

MEERANNANKUTTY, S/O. IBRAHIM, THATTANPARAMBIL, PATTIMATTOM KARA, KOOVAPPALLY VILLAGE.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

C.R.P.No. 310 of 2007

ORDER

Heard counsel for the petitioners.

2. The petitioners are the judgment debtors in O.S.No.61/02 on the file of the Munsiff's Court, Kanjirappally. They filed objection to the execution of the decree passed in the said suit contending that the property sought to be delivered over as per the decree is not identifiable and that the property, as located by the Commissioner, is not tallying with the plaint description. The court below, vide impugned order, rejected the said contention and ordered delivery of the property.

3. It is argued by the counsel for the petitioners that the property described in the plaint and in the execution petition do not tally and that, therefore, the execution court is not justified in ordering delivery of the property, in execution of the decree.

4. It is worthy to note that the suit was decreed as early as on 31.1.2006. The petitioners have not preferred any appeal therefrom. As per the decree, the right of the decree holder over item No.2 property was declared and he was allowed to recover possession of the same. The property had already been identified by the Commissioner and Exhibit C2 report and Exhibit C2(a) plan submitted by the Commissioner have been accepted also by the court. The impugned order shows that plaint item Nos.1 and 2 properties are specifically shown in the plan and are described in Exhibit C2 report as well and the court below observed that the scheduled properties, on the basis of Exhibits C2 report and C2(a) plan, are clearly identifiable. To avoid further grievance of the petitioners, the court below appointed the very same Commissioner Advocate Sri.Jose Joseph, who submitted Exhibits C2 report and C2(a) plan, to supervise the work with the assistance of Taluk Surveyor Joby Jose, who was

the very same Surveyor, who assisted the Commissioner and prepared Exhibit C2(a) plan. The contention that the property is not identifiable was, in the circumstances, rightly rejected by the court below, vide order impugned, whereby the court below has ordered delivery also being effected.

This writ petition, impugning the said order, in the circumstances, is devoid of merit and is dismissed.

30th March, 2007 (K.P.Balachandran, Judge)

tkv